

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JAN 26 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Pay Telephone )

Reclassification and Compensation )

Provisions of the Telecommunications )

Act of 1996 )

CC Docket No. 96-128

**JOINT MOTION TO EXTEND TIME  
FOR FILING PUBLIC COMMENTS**

Pursuant to Section 146(b) of the Commission's rules,<sup>1</sup> **Evercom Systems, Inc.** ("Evercom"), **T-NETIX, Inc.** ("T-NETIX") and **Corrections Corporation of America** ("CCA") (collectively, the "Interested Parties") jointly move the Commission for a modest extension of time for filing comments on the *Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues In a Pending Rulemaking* filed by Martha Wright and others ("Wright Petition" or "Petition").<sup>2</sup>

**I. Summary**

The Wright Petition is a lengthy, 345-page filing that proposes fundamental changes in the Commission's approach to regulation of telecommunications services provided to incarcerated inmates ("inmate services"), based on what the Petition and its supporting telecommunications expert assert are public policy, technological and economic changes since the Commission first

<sup>1</sup> 47 C.F.R. § 1.46(b)

<sup>2</sup> *Petition for Rulemaking Filed Regarding Issues Related to Inmate Calling Services Pleading Cycle Established*, Public Notice, CC Docket 96-128, DA 03-427 (rel. Dec. 31, 2003) ("Public Notice"), 69 Fed. Reg. 2967 (Jan. 20, 2004). As noted therein, the Commission is considering the Wright Petition as an *ex parte* presentation in connection with the pending Order on Remand and Notice of Proposed Rulemaking in CC Docket 96-128, 17 FCC Red. 3248 (2002) ("Inmate Payphone Proceeding"), released in February 2002.

cc: [unclear] at 4.

addressed inmate services in 1991. The Commission's *Public Notice*, however, provides only 20 days for opening comments and 10 days for reply comments on the Petition. This is manifestly inadequate to permit the preparation and compilation of technical and related evidence on the competitive and economic structure of the inmate services market. The FCC routinely allows 30 to 60 days for preparation of opening comments in proceedings of comparable complexity, and should permit a modest extension of time here, as the extremely abbreviated periods set forth in the *Public Notice* will unfairly prejudice the Interested Parties as well as state and local correctional agencies and officials, all of whom would be directly affected by the policy changes proposed. Therefore, the Commission should extend the time for filing initial comments to March 10, 2004 and for reply comments to March 31, 2004.

## **II. Background**

On December 31, 2003, the Commission released the *Public Notice*, announcing the filing of the Wright Petition and soliciting comments thereon. The Petition with its associated Attachments and Exhibits consists of some 345 pages of material, including a lengthy affidavit by the Petitioners' expert consultant, Mr. Douglas A. Dawson, and supporting Exhibits.<sup>3</sup> On January 19, 2004, notice of the Wright Petition was published in the Federal Register. Initial Comments currently are due on February 9, 2004, and reply comments are due ten (10) days later on February 19, 2004.

The Petition asserts that the Commission's historic policy of exempting inmate payphones from the unblocking and related requirements applicable to payphones made available to the general public is incorrect, and that the correctional, security and penological considerations supporting that policy are baseless. It calls for the creation by the FCC of a new regulatory regime under which the

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<sup>3</sup> The Dawson Affidavit itself was not readily accessible until the week of January 5. The various Exhibits thereto and the other Attachments similarly did not become readily accessible until that same week.

Commission would require interconnection and equal access by all long-distance carriers to inmate telecommunications systems and impose a scheme of rate regulation on inmate service providers. As the *Public Notice* describes, the Petition “requests that the Commission prohibit exclusive inmate calling service arrangements” and “permit multiple long-distance carriers to interconnect with prison telephone systems.”

The Interested Parties are all providers of inmate calling services that would be directly affected by the adoption of the far-reaching proposals contained in the Wright Petition and the Public Notice. Indeed, Evercom and CCA (two of the three Interested Parties) are used as examples in and are the basis for the Petition.

### **III. Good Cause Exists For A Reasonable Extension Of Time Which Is Necessary To Permit Full And Informed Analysis Of And Comments On the Petition**

The Petition advocates fundamental technological and economic changes in the established system for providing long-distance telephone service to inmates at confinement facilities, an environment that the Commission has long-recognized as a special case. Along with Mr. Dawson’s 43-page accompanying affidavit, the Petition contains, among other things, broad assertions about the current and projected costs of providing such services in the inmate environment, the alleged lack of any impact of the Petition’s proposals on legitimate penological concerns and the minimal economic burden of a revised, multi-carrier system advocated in the Petition on inmate providers. Mr. Dawson supports his assertions with 15 Exhibits totaling some 250 pages, including various economic articles and cost analyses.

Additional time to file comments in a rulemaking proceeding is justified when the requested extension can be shown to be in the public interest and for “good cause.”<sup>4</sup> In this instance, such

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<sup>4</sup> See e.g., *In the Matter of Telephone Number Portability, Order*, CC Docket 95-116, DA 03-4059 (rel. Dec. 19, 2003), see also *In the Matter of Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number*

good cause exists due to the need for the Interested Parties to have a reasonable amount of time within which to review and respond to the lengthy and detailed analyses included in the Wright Petition. To provide informed comments necessary for a thorough and complete record, the Interested Parties and other commenting parties will be required to consult with their own experts about the economic and technological issues raised by the Petition and Mr. Dawson. In particular, the true costs associated with shifting to a system such as the one suggested, which Mr. Dawson in particular minimizes, will have to be realistically assessed and supported. It cannot be fairly assumed that the technological and economic impacts are as simple and as minimal as the Petition contends. For the Interested Parties to make their own assessment and formulate the analysis into useful comments, including any needed affidavits of experts, will require a reasonable period of additional time.

The Wright Petition and the Dawson Affidavit no doubt took months in preparation and assembly. The Commission has been considering the closely related issues in the *Inmate Payphone Proceeding* for some time, and the substantial technological changes proposed in the Petition would plainly require many months if not years to implement. Therefore there is no prejudice to petitioners or the inmates they purport to represent, particularly in light of the fundamental changes advocated by the Petition, from the relatively modest amount of additional time now requested by the Interested Parties.

The Commission routinely grants additional time on these grounds, especially where (as here) the parties would not otherwise have sufficient time to analyze and respond to filings that raise

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*Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990. Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery, Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-In-Billing and Billing Format, Order, 18 FCC Rcd 5982 (2003), id., Order, 18 FCC Rcd 817 (2003), In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, 17 FCC Rcd 13864 (2002).*

complex substantive matters and to ensure the most complete and well-developed record possible, particularly where there is no prejudice the petitioning parties.<sup>5</sup> Under such circumstances, it is manifestly in the public interest to extend the time for filing opening and reply comments in this proceeding to the dates that the Interested Parties have proposed. In the absence of this extension, moreover, the Commission will unnecessarily deprive the Interested Parties of the opportunity to compile the necessary technical, economic and policy materials to rebut or otherwise address the Petition's assumptions. It would also make it virtually impossible for most correctional agencies and officials, whose penological judgment and authority is directly questioned by the Dawson Affidavit and the Petition, to respond and participate in these proceedings.

**WHEREFORE**, for all these reasons the Commission should extend the time for filing initial comments on the Wright Petition to March 10, 2004 and reply comments to March 31, 2004.

Respectfully submitted

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*See, e.g., In the Matter of AT&T Corp. – Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, WC Docket No. 03-133, DA 03-2188 (rel. July 2, 2003); *In the Matter of a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, DA 01-2188 (rel. Sept. 19, 2001); *In the Matter of Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands*, E1 Docket No. 00-221, DA 01-451 (rel. Feb. 16, 2001).

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Dated January 26, 2004

### CERTIFICATE OF SERVICE

I, Paul C. Besozzi, hereby certify that on this 26th day of January 2004, I did cause to be served by electronic mail and/or hand delivery or overnight courier a copy of the foregoing "**Joint Motion To Extend Time For Filing Public Comments**" on the following individuals.

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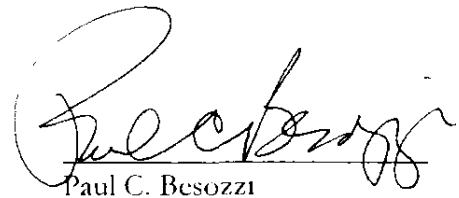
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